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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re RICARDO L., JR., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

RICARDO L., SR., et al.,

Defendant and Appellant.

D055276

(Super. Ct. No. NJ14085)

APPEALS from orders of the Superior Court of San Diego County, Michael J.

Imhoff, Commissioner. Affirmed.

Ricardo L., Sr., (Father)¹ appeals orders declaring his minor son, Ricardo L., Jr., a dependent of the juvenile court under Welfare and Institutions Code² section 300,

¹ We refer to Ricardo L., Sr., as Father in this appeal in order to avoid confusion with Ricardo L., Jr., the minor that is subject to this appeal.

subdivision (b), and removing him from his custody under section 361, subdivision (c)(1). Father challenges the sufficiency of the evidence to support the court's jurisdictional and dispositional findings. Hortensia, Ricardo's mother, challenges the court's jurisdictional findings and joins in Father's challenge to the dispositional findings. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In March 2009 agents working on behalf of the Drug Enforcement Agency (DEA) brought 10-year-old Ricardo to Polinsky Children's Center after agents seized drugs, guns and a large amount of cash from Ricardo's home. The DEA agents arrested Ricardo's parents and reported that the drugs and guns were accessible to Ricardo.

Social workers working on behalf of the San Diego County Health and Human Services Agency (Agency) met and interviewed Ricardo. Ricardo reported that he lived with his parents and his older brother, Jose. He had an older sister who did not live in their home. He described having a positive relationship with his parents and denied any form of abuse. The social worker asked Ricardo whether he knew about the weapons in the home. Ricardo responded that to his knowledge, there were four guns in the home and that Father had the guns for self-protection or to shoot coyotes on their ranch. Ricardo denied using or touching the guns.

Ricardo acknowledged that the agents found drugs in his home. When asked if drugs were common in the home, he replied, "sometimes." He stated that he has seen the

² Statutory references are to the Welfare and Institutions Code.

same types of drugs the officers seized in the past. Father would bring the drugs to the house and put them somewhere. Ricardo did not know where Father stored the drugs. When asked if Hortensia knew about the drugs in the home, Ricardo said "yes" and that she was in the home when Father stored the drugs in the home. Ricardo did not know if Father sold the drugs or where they were kept in the house.

The social worker met with Hortensia to discuss the presence of drugs and weapons in the home. Hortensia claimed she did not know there were drugs in the home but she admitted that she knew about the four guns Father kept in the house. She stated the guns were kept under the bed. Hortensia acknowledged that the DEA agents found drugs in the home and she believed the agents seized one pound each of marijuana and methamphetamines. Hortensia denied using drugs or alcohol and she did not believe Father abused illegal substances.

The social worker contacted Special Agent James Higgins to discuss the search of Ricardo's home. Higgins reported that agents obtained a search warrant of the home after they followed a truck to the home and recovered one pound of methamphetamines from the truck. The agents searched the home and seized about two pounds of marijuana from the parents' bedroom closet. Father admitted to Agent Higgins that he had stored methamphetamines in his bedroom closet along with the marijuana. Agent Higgins further reported that agents found \$17,000 on Father's person and that the street value of one pound of methamphetamines is equivalent to \$17,000. The agents also found large amounts of cash in the home.

In addition to the drugs, the agents seized four guns in the home including a 9mm Beretta, a handgun, a rifle and a shotgun. The 9mm Beretta and handgun were found underneath Father and Hortensia's mattress. The rifle was in the master bedroom closet and the shotgun was in a different bedroom. Agent Higgins told the social worker that the DEA would submit a report of its findings to the Agency.

On March 10, 2009, the Agency filed a petition on behalf of Ricardo under section 300, subdivision (b). The petition alleged that Ricardo was at substantial risk of suffering serious physical harm or illness. On March 5, 2009, Father and Hortensia left the minor inadequately attended and unsupervised in the home where there were dangerous firearms and illegal drugs. Father admitted he had stored methamphetamines in the home.

The court held a detention hearing and detained Ricardo after finding a prima facie showing had been made that he was a person described by section 300, subdivision (b).

In April 2009 the Agency filed a jurisdiction and disposition report recommending that Ricardo remain out of the home and that the parents receive reunification services. The social worker reported that the parents were willing to accept services and wanted to reunify with Ricardo. The parents were allowed to have liberal and supervised visits with Ricardo. This indicated that the prognosis for reunification was good. However, Hortensia continued to assert that she did not know drugs were in her home. Father did not want to discuss with social workers the incident that led to Ricardo's removal and instead, referred the social worker to his attorney. The social worker reported that drugs and guns were found in the home and that these items were accessible to Ricardo. The

social worker believed that until the parents took responsibility for their actions, Ricardo would not be safe with them in the home.

In an addendum report filed before the jurisdiction and disposition hearing, the social worker reported that the DEA investigation report had been submitted to the Agency. The DEA reported that agents had been monitoring the activity of two men for drug activity. The two men left Father's residence, at which time the agents began to maintain surveillance on Father's home. The agents later searched Father's residence and found cash, guns and drugs. Father admitted that he had met with the two men whom the agents had been monitoring and that he stored the methamphetamine for the two men. He had given the men one pound of methamphetamine that he allegedly was storing for them. Father admitted he had stored drugs for these two men in the past in exchange for money. Father further admitted that he had purchased two of the four guns found in his home on the street from gang members. He did not know the names of the gang members.

DEA agents reported that Father admitted to growing marijuana on his property before the plants burned down about two years prior. Father claimed that the marijuana seized by the agents was two years old. The agents reported that several Styrofoam cups with holes poked in the bottom were found on the property, in addition to packaging material and several containers filled with marijuana seeds. The agents noted that the cups and seeds are indicative of a marijuana grow. Regarding the \$17,000 found on Father, Father stated it was his cash savings and that he was going to buy a car with the money. The agents also found about \$18,000 in the master bedroom closet.

The social worker contacted Hortensia's therapist to address the mother's progress. The therapist indicated that a safety plan had not been completed and more time was needed to develop the plan. Until a plan was in place, the therapist did not have a "clear idea about [Hortensia's] ability to maintain the safety at home."

In additional addendum reports filed in May 2009 and June 2009, the social worker recommended that Ricardo be placed with Hortensia after the Agency verified that Father "has moved out of the home." Hortensia had been making significant progress with services. The therapist noted Hortensia was learning the tools she needed to ensure the family home would be drug free and safe for Ricardo. Hortensia had represented that she did not know what drugs looked like or what they do because she had never seen drugs before. The therapist reported Hortensia would receive basic education about drugs and the risks involved with using drugs. Hortensia had not yet reviewed information about the drugs that were found in her home by the time the June 2009 addendum report was filed.

The social worker spoke with Father's therapist, Dr. Luis Terrazas. Father participated in therapy sessions once a week. Dr. Terrazas described Father as being cooperative but "very guarded." Father had yet to admit to having drugs in the home and denied involvement with drugs. He did, however, admit to using marijuana for medicinal purposes. Father denied that he told the DEA agents that he stored methamphetamines in his home.

Father participated in a Substance Abuse Recovery and Management Systems (SARMS) program. A SARMS worker reported Father was in compliance with the

SARMS program. However, Father remained in denial with respect to the guns and drugs that were found in the home. The social worker believed that Father needed more time in the SARMS program before he could admit why his son was taken from his custody.

The social worker also believed Father needed to continue participating in services. Father continued to deny any involvement with drugs other than marijuana, which he claimed he used for medicinal purposes. This ongoing denial probably stemmed from Father's pending criminal charges. However, until Father's denial about his drug involvement is resolved, Father might not be able to fully benefit from services. Hortensia also needed more time to understand drugs and the dangers they posed. The Agency recommended family maintenance services for Hortensia.

At the jurisdiction and disposition hearing, the court heard testimony from two Agency social workers and Ricardo's older brother, Jose. Social worker Diaz-Gallegos testified she spoke with Ricardo about the drugs and guns in the home. Ricardo appeared nervous when speaking to Diaz-Gallegos about the drugs. However, Ricardo stated that he had seen drugs in the home in the past and that he had seen his father bring drugs into the home. Ricardo knew there were guns in the home that Father used for protection. The guns were not located in any type of safe or lockbox.

In making her recommendation that Ricardo remain out of the home while his parents pursued their case plans, Diaz-Gallegos considered the fact that there were drugs and guns in the home. The location of the guns and the information she received from the DEA agents were also factored into Diaz-Gallegos's recommendation. DEA agent

Higgins stated that the 9mm Beretta was loaded. The gun was under the mattress located in the master bedroom. Also, large quantities of drugs were found along with marijuana seeds.

Social worker Esther Sipe testified that she spoke with Father and his therapist about Father's progress in therapy. Sipe stated that, in her opinion, Ricardo could be returned to his home in Hortensia's care, but she did not recommend allowing Father back home. Father still had many issues to address in therapy. Hortensia also needed more time to engage in services. Sipe believed that Hortensia would not be able to protect Ricardo until Hortensia learned what drugs looked like and could identify them in the home. Sipe further testified that Hortensia could not be a protective parent if Father returned to the home until Hortensia completed additional services. Hortensia did not protect Ricardo in the past and there remained a risk that she would not protect Ricardo now. In Sipe's opinion, a protective issue remained because the parents had not completed enough services and they had not taken accountability for their actions.

Jose, Ricardo's older brother, testified that he knew guns were in the home but that the family had strict rules in place about touching the guns. He was told as a child not to go near the guns. After Jose turned 16 years old, his parents taught him how to load and unload a gun. They also taught him about gun safety. Jose admitted authorities had found a shotgun on the top shelf of his closet. The gun was not loaded. Jose admitted the master bedroom door did not have a lock on it.

After hearing testimony and reviewing the Agency's reports, the juvenile court found that the statements made by Father to the DEA agents on the day of Father's arrest

were credible. The court believed that this was a case involving a criminal enterprise with respect to the storage, transportation and sale of illegal drugs. The court noted that Ricardo knew drugs were in the home and that Father had stored them in the home. The court further noted the parents minimized the risk drugs and guns posed to the children even though large quantities of marijuana were found and evidence of items related to a marijuana grow were also found.

The court took jurisdiction over Ricardo and made a true finding on the petition. The court removed Ricardo from Father's custody under section 361, subdivision (c) and ordered Ricardo placed with Hortensia under section 361, subdivision (a).

DISCUSSION

I

CONFLICT OF INTEREST

Father asserts that the court erred when it denied his request to substitute his court appointed counsel for the same counsel representing Hortensia during the proceedings. He argues there was no conflict of interest and, in any event, he had waived any potential or actual conflict of interest.

A. Background

The court held a jurisdiction and disposition hearing on June 8, 2009. At the start of the hearing, Hortensia's attorney, Canela Cavada, informed the court that Father wanted her to represent him at trial. Father, until that time, had been represented by his own counsel. Father's counsel, Cristina Sanchez, stated that Father had informed her of his wish to have Cavada represent him at trial. Cavada represented that she had been

working with Father and Hortensia and that no conflict existed in representing both parents. Father was prepared to waive any potential conflict.

The court found that there was a conflict of interest in having Cavada represent both parents. The court noted that both parents faced criminal charges. The court further noted that based on the Agency's reports, the parents were "going to have to be opposite one another with respect to Ricardo's statements"

B. Relevant Law and Analysis

Here, Father does not show that the juvenile court abused its discretion when it determined that mother's trial counsel had an actual conflict in representing both parents and disqualifying counsel from representing Father at trial. When disqualifying an attorney for an alleged conflict of interest, courts consider factors such as a client's right to choose counsel of his or her choice and the attorney's interest in representing the client. (See *In re A.C.* (2000) 80 Cal.App.4th 994, 1005.) The trial court's decision to disqualify counsel will not be disturbed on appeal absent an abuse of discretion. (See *In re Lee G.* (1991) 1 Cal.App.4th 17, 27.)

Trial courts have the power to order disqualification of counsel when necessary in furtherance of justice. (Code Civ. Proc., § 128, subd. (a)(5).) "In a proceeding to disqualify counsel the trial court . . . 'must weigh the combined effect of a party's right to counsel of choice, an attorney's interest in representing a client, the financial burden on a client of replacing disqualified counsel and any tactical abuse underlying a disqualification proceeding against the fundamental principle that the fair resolution of disputes within our adversary system requires vigorous representation of parties by

independent counsel unencumbered by conflicts of interest. [Citations.]' " (*In re Lee G.*, *supra*, 1 Cal.App.4th at p. 26.)

The court properly found a conflict of interest existed. Based on the reports from the Agency and DEA, Hortensia and Father's roles in the issues leading to the dependency proceedings are different. Hortensia claims she did not know drugs were in her home or that she knew what drugs looked like. Father, however, admitted to the DEA agents that he stored drugs in the home and had grown marijuana in the past. Based on these different circumstances, it was reasonable for the court to find that having the same counsel represent both parents would create a conflict. The reunification plans for the parents are different based on their roles in the problems leading up to the proceedings. They have separate therapists and separate issues to address. This is illustrated by the fact that the social worker's recommendations at the jurisdiction and disposition hearings concerning the reunification plans between each parent and Ricardo are different. Specifically, the Agency recommended that Ricardo return home to Hortensia's care, but that Father should remain out of the home based on his inability to become fully responsible for his actions. The parents' differing positions in their cases and the facts surrounding the case could present a variety of instances in which Father and Hortensia are opposed to one another or create an instance in which one parent is able to reunify with Ricardo but the other parent is not. The court did not err by finding a conflict of interest existed in this case.

II

FATHER CHALLENGES THE COURT'S JURISDICTIONAL FINDINGS

Father and Hortensia argue the evidence was insufficient to support the court's findings under section 300, subdivision (b). They assert there was no evidence that Ricardo suffered, or was at risk of suffering, serious physical harm as a result of the presence of drugs and guns in the home.

A. Standard of Review

In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass judgment on the credibility of witnesses, attempt to resolve conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court's order, and affirm the order even if there is other evidence that would support a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) When the trial court makes findings by the elevated standard of clear and convincing evidence, the substantial evidence test remains the standard of review on appeal. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.) The appellant has the burden of showing that there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947; *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

*B. Substantial Evidence Supports the Court's
Section 300, Subdivision (b) Jurisdictional Findings*

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness as a result of a parent's failure to adequately supervise or protect the child or to provide adequate medical treatment. In enacting section 300, the Legislature intended to protect children who are currently being abused or neglected, "and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.) The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194-196.)

The evidence here shows that DEA agents went to Ricardo's home and seized drugs, large amounts of cash and firearms. At least two of the four guns found by the agents were purchased by Father from gang members, stored in the family home and unregistered. One of the guns seized by DEA agents was loaded. In addition to the guns, Father admitted to DEA agents that he had stored large quantities of methamphetamines for dealers in the past and the dealers paid him a storage fee. In addition, Father stored marijuana in the family home. Along with marijuana leaves, Father stored items in the home associated with growing marijuana including marijuana seeds, packaging materials and Styrofoam cups with holes in them.

Each of these items standing alone might not seem to present risk to a 10-year-old child. These items taken together, however, are indicative that Father stored drugs and

weapons in his home as part of a criminal business or enterprise. Living in a home where such items can be found and accessed by a minor like Ricardo poses a substantial risk of harm. It was reasonable for the trial court to infer that Ricardo could harm himself by accessing the guns or drugs. Ricardo admitted to the social workers that he knew drugs and guns were in the home. Ricardo, a 10-year-old child, had the ability to look for or come across these items in his home. Further, it was reasonable to infer that having such items in the home and operating a criminal business would place Ricardo at risk of being exposed to violent individuals that may come to the home.

Further, the record shows that the parents repeatedly minimized the dangers in the home and had yet to become fully accountable for their actions. Hortensia denied knowing there were drugs in the home. She claimed she had never seen drugs and did not know what drugs looked like. Her therapist reported that Hortensia needed more time to learn how to identify drugs in the home and how to keep a child safe from the drugs. Father had yet to admit in his therapy sessions that he had a history of being involved with drugs, and his therapist admitted more time was needed for Father to make progress in therapy. Substantial evidence supports the court's finding that Ricardo was at substantial risk of serious harm by his exposure to drugs and weapons in the home.

III

FATHER'S CHALLENGE TO THE COURT'S DISPOSITIONAL FINDINGS

Father contends the evidence was insufficient to justify removing the minor from his custody. Specifically, he asserts the facts did not warrant removing Ricardo from his custody and that by the time of the disposition hearing, the protective issues in the case

had been resolved. He further argues that Ricardo's removal was unnecessary because there were less drastic alternatives than removal available to the court. Hortensia joins in Father's argument, asserting that the court did not have sufficient evidence to remove Ricardo from Father's care.

A. Substantial Evidence Supports the Removal Order

Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) The parent need not be dangerous and the child need not have been actually harmed for removal to be appropriate. The focus of the statute is on averting harm to the child. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 535, citing *In re B. G.* (1974) 11 Cal.3d 679, 699.) In this regard, the court may consider the parent's past conduct as well as present circumstances. (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.)

Here, the court removed Ricardo from Father's custody because Father had yet to admit his actions led to Ricardo's dependency. A combination of illegal drugs, weapons and cash likely obtained from drug sales were found in the home. One of the four guns was loaded. Ricardo knew drugs and guns were in the home. The evidence also showed Father had a history of dealing with illegal drugs. He admitted to growing marijuana on his property and storing large quantities of methamphetamines in the house in the past.

The DEA agents found large amounts of cash in the home and on Father's person. Even with these facts, Father had yet to admit he had dealings related to the sale of drugs.

Father argues that Ricardo was not harmed by the drugs or guns because they were inaccessible to Ricardo. He further argues that the drugs and weapons had been seized and were no longer in the home and no threat existed to Ricardo. However, the court did not need to wait for Ricardo to be harmed before removal was appropriate. Rather, the court's reason for removing Ricardo was to avert harm to him. Until the parents' outstanding issues are addressed in therapy and they take full responsibility for their actions, returning Ricardo home would only place him at risk of harm. The evidence supported a finding that Ricardo was at substantial risk of harm if returned home.

B. Alternatives to Removal

The evidence also supported a finding that there were no reasonable means by which Ricardo could be protected without removal from Father's custody. Both Father and Hortensia had not made themselves accountable for the fact that drugs and weapons were found in the home. We acknowledge that the parents had started therapy and were making progress with their services. Father had not admitted to his therapist the extent of his involvement with drugs. When questioned why Ricardo was removed from his care, Father would not discuss the fact that drugs were found in his home. The therapist reported that she needed more time to work with Father. Substantial evidence supports the court's dispositional order.

DISPOSITION

The orders are affirmed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

McINTYRE, J.